

No. 2872

United States
Circuit Court of Appeals

For the Ninth Circuit.

CHARLES A. SULZER, J. M. TANNER, J. R.
HECKMAN, ARTHUR G. SHOUP, WILL-
IAM E. BRITT and JOHN B. HEID,
Appellants,

vs.

WALSTEIN G. SMITH, as Treasurer of and for the
Territory of Alaska,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the
District of Alaska, Division No. 1.

Filed

DEC 22 1916

F. D. Monckton,

Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

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CHENEY, of Juneau, Alaska,

Attorneys for Appellants.

JOHN H. COBB, of Juneau, Alaska,

Attorney for Appellee.

*In the District Court for the Territory of Alaska,
at Juneau, Division No. 1.*

No. 1323-A.

CHARLES A. SULZER, J. M. TANNER, JOHN R.
HECKMAN, ARTHUR G. SHOUP, WILL-
IAM E. BRITT and JOHN G. HEID, for
Themselves and as Representatives of and for
the People of Judicial Division No. 1, South-
eastern Alaska,

Plaintiffs,

vs.

WALSTEIN G. SMITH, as Treasurer of and for
the Territory of Alaska,

Defendant.

Bill of Complaint.

To the Judge of the District Court of and for the
Territory of Alaska, in Division No. 1:

1.

Charles A. Sulzer, J. M. Tanner, John R. Heck-
man, Arthur G. Shoup, William E. Britt and John
G. Heid, all citizens of the United States and of the
Territory of Alaska, and representatives of and for

all the people residing in said Division No. 1 of the Territory of Alaska, bring this suit against Walstein G. Smith, as treasurer of and for the said Territory of Alaska, and thereupon your complainants say:

2.

That said Charles A. Sulzer, of Sulzer, Alaska, and said J. M. Tanner, of Skagway, Alaska, each, now are the duly elected, acting and qualified senators of and for said Division No. 1 of said Territory of Alaska, and representing and did represent the people of the said Division No. 1, in the Senate of the Legislature of the said Territory of Alaska, at its second session held in the spring of the year 1915.

3.

That said John R. Heckman, of Ketchikan, Alaska, and Arthur G. Shoup, of Sitka, Alaska, William E. Britt, of Juneau, Alaska, and John G. Heid, of said Juneau, Alaska, are all citizens of the United States of America, and citizens and residents of said Division No. 1, Alaska, and representatives [1*] of and for all the people of said Judicial Division No. 1, Territory of Alaska, and did represent the people of said Division No. 1 in the House of Representatives of the Legislature of said Territory at and during its second session, in the spring of the year 1915.

4.

That the said above-named complainants bring this suit on behalf of and for the benefit of themselves and said citizens and residents of said Judicial Division No. 1, Alaska; the matter involved, and to be

*Page-number appearing at foot of page of original certified Transcript of Record.

determined herein, being of a common interest of and to all said citizens and residents, and it is impracticable to bring them all before this Court.

5.

That the said Territory of Alaska is divided into four Judicial Divisions, viz.: Division No. 1, embracing southeastern Alaska; Division No. 2, embracing northern Alaska; Division No. 3, embracing western and southwestern Alaska; and Division No. 4, embracing eastern or interior Alaska.

The said Division No. 1, of Alaska, containing, approximately, an area of forty-nine thousand (49,000) square miles; the said Division No. 2 containing, approximately, an area of one hundred fifty-eight thousand six hundred (158,600) square miles; the said Division No. 3 containing an approximate area of one hundred and sixty-two thousand (162,000) square miles; and said Division No. 4 containing an approximate area of two hundred twenty-eight thousand and six hundred (228,600) square miles.

6.

That in the month of August, 1902, by proclamation of the President of the United States of America, duly made, the Alaska Tongass National Forest Reservation was created, and which said Tongass National Forest Reservation was, in the month of February, 1909, by proclamation duly made by the President of the said United States extended to its present limits, which limits embrace the greater part of said Division No. 1, and is wholly situated and lying therein.

7.

That by the Act of the Congress of the said United States, approved [2] May 23, 1908, it was and is provided as follows:

“That hereafter twenty-five per centum of all money received from each Forest Reserve during any fiscal year, including the year ending June 30, 1908, shall be paid at the end thereof by the Secretary of the Treasury to the State or Territory in which said reserve is situated, to be expended as the State or Territorial Legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which the Forest Reserve is situated; Provided, That when any Forest Reserve is in more than one State or Territory or county the distributive share to each from the proceeds of said reserve shall be proportional to its area therein.”

8.

That of and from all the money derived and received by the United States of America from the sale of timber, uses, etc., of the said Tongass National Forest Reserve, all situated within and in said First Judicial Division of Alaska, as aforesaid, twenty-five per centum thereof was paid by the Secretary of the Treasury of the said United States to said defendant, Walstein G. Smith, as treasurer of the said Territory of Alaska, and amounting to the full sum of \$52,968.17 for the purposes aforesaid, to wit, for the benefit of the public schools and public roads of said Division No. 1, to be expended in said Divi-

sion No. 1 as the Territorial Legislature of Alaska may prescribe.

9.

That the said Alaska Territorial Legislature, in the year 1915, at its second session thereof, by and through a majority of its members hailing from localities outside of and without said First Judicial Division, to wit, said second, third and fourth judicial divisions, in the month of April, 1915, passed an Act, being House Bill No. 14, entitled "An Act creating four districts in the Territory of Alaska, and creating the office of road commissioners for each road district and appropriating moneys derived from that certain fund in the treasury of the Territory of Alaska, known as the 'Forest Reserve Fund,' for the purpose of building, repairing and maintaining of trails, roads and bridges in the Territory of Alaska, and declaring an emergency therefor."

10.

That the said above-mentioned legislative Act was approved by the Governor of Alaska on April 28, 1915; the said Territorial Legislature [3] by said Act attempting to divide the Territory of Alaska into four road districts, each being one of the judicial divisions aforementioned, to be and constitute a road district, and attempting to divide all of the money received by the Treasurer of the Territory of Alaska from the Secretary of the Treasury of the United States under said Act of Congress, approved May 23, 1908, as follows: twenty-five per centum (25%) for the use and benefit of public schools in Alaska, and seventy-five (75%) per cen-

tum to be divided equally between said four judicial divisions or road district, thereby giving and apportioning to each of said four road districts a one-fourth part or share of said forestry money or fund, irrespective of the fact whether any part of said whole fund had been paid on account of a Forest Reserve being situate in such divisions or districts, contrary to the provisions and intent of said Act of Congress, approved May 23, 1908, and to the irreparable damage and injury of said Division No. 1 of Alaska, represented by these plaintiffs and complainants, in that, if the wrongful and unconstitutional provisions of said Alaska Territorial Act, passed and approved as aforesaid on April 28, 1915, making such division of said school and road fund, as aforesaid, are carried out and performed by said defendant, as such Treasurer of the Territory of Alaska, said school and road fund so created, as aforesaid, will be divided into four parts as directed by said wrongful and unconstitutional Act of said legislature, three-fourths part of said full sum, to wit, the sum of thirty-nine thousand seven hundred twenty-six and $12/100$ dollars, will be entirely lost to said Division No. 1 of Alaska and said Division No. 1 of Alaska, its residents, citizens, as well as school children therein, (of which there are many), will be deprived of the use and of the whole of the same for such said school and road purposes, without redress or possible recovery of the said money or fund, belonging to said Division No. 1 of Alaska, to the great and irreparable injury and damage of

the said school children and residents, inhabitants and citizens of said Division No. 1 of Alaska. [4]

11.

That the said forestry, school road fund, aforementioned, and amounting, so far, to the sum of \$52,-968.17, has been paid into the treasury of the Territory of Alaska by the Secretary of the Treasury of the United States, and is now in the hands and custody, and under the full control, of the said defendant, Walstein G. Smith, as Treasurer of said Territory of Alaska, subject to the disposal under the provisions of said Act of the Legislature of Alaska, and unless restrained and prohibited by an order of this Court, the said defendant, as such treasurer, will pay out of the treasury of said Territory of Alaska, the sum of thirty-nine thousand seven hundred twenty-six and 12/100 dollars (\$39,726.12), belonging to said Division No. 1, being a three-fourths part of the whole of said fund, to said road districts, numbered 2, 3 and 4 of said Territory of Alaska, to the great and irreparable injury and damage of and to said Division No. 1, and for which said Division No. 1, its citizens, residents, inhabitants and school children, have no plain, speedy, complete or adequate remedy at law.

12.

That the said Act of the said Alaska Territorial Legislature, approved April 28, 1915, as aforesaid, is void for uncertainty and is unconstitutional for the following reasons:

a. The said Act does not provide for a common road system in Alaska, and makes no specific appro-

priation for the construction of any specific road within any one of the road districts or divisions mentioned, and does not prescribe any specific sum of money to be expended in the construction of any particular road, nor how and where, in any one of said road districts or divisions said school or road fund shall be expended.

b. The said Act does not define the duties of the several road commissioners, attempted to be created by said act.

c. The said Act does not provide to whom the said road commissioners shall give the bond specified in said Act. [5]

d. The said Act is in conflict with said Act of Congress, approved May 23, 1908, and therefore is void and of no effect.

e. The said Act is in conflict with, and unauthorized by section 3 of the "Organic Act" passed by the Congress of the United States of America, approved August 24, 1912, entitled "An Act to create a legislative assembly in the Territory of Alaska, to confer legislative power thereon, and for other purposes," in that, the said section 3 does not extend the authority of the legislative assembly, created by said Act, to alter, amend, modify and repeal the Act entitled "An Act to provide for the construction and maintenance of roads, the establishment and maintenance of schools, and the care and support of insane persons in the District of Alaska, and for other purposes."

13.

That of the said forestry fund, the said sum of

\$52,968.17 was paid, as aforesaid, to said defendant, Walstein G. Smith, as treasurer of and for the Territory of Alaska, and was so paid to said defendant, as such treasurer, on account of and derived from sales of timber, uses, etc., of said Tongass National Forest Reserve, all of which said Tongass National Forest Reserve being situated in and within the limits and boundaries of said Judicial Division No. 1 of Alaska. That said Judicial Division No. 1 is a civil division of the Territory of Alaska for political and judicial purposes, and said Division No. 1 is entitled to have and use all of said above-mentioned sum of \$52,968.17.

PRAYER.

WHEREFORE, complainants humbly pray that this Honorable Court may make and enter its order and decree, adjudging and decreeing that said Division No. 1 of Alaska, its citizens, residents, and inhabitants to be entitled to, and have the use of, all of said sum of \$52,968.17; derived from the sales of timber, uses, etc., of the said Tongass National Forest Reserve, situated and being all in said Division No. 1 of Alaska, for school and public road purposes as provided by said [6] Act of Congress approved May 23, 1908;

That this Honorable Court may make and enter its further order and decree, perpetually enjoining the defendant, as such treasurer, his agents or employees, from paying out any part of said Forestry Reserve Fund, in his possession or under his control, to anyone, save and except to said Division No. 1 of Alaska, its agents, servants or officers en-

titled to receive the same for or on account of said Division No. 1;

That the defendant be enjoined and restrained by an order of this Court from committing any of said acts, herein complained of, pending this suit.

That complainants may have such other and further relief as may to the Court seem equitable and just in the premises.

JOHN G. HEID,
Attorney for Complainants.

United States of America,
District of Alaska,
Division No. 1,—ss.

John G. Heid, being first duly sworn, says: I am one of the complainants named in the foregoing and within complaint, that I have read the said complaint and know the contents thereof, that the same is true as I verily believe.

JOHN G. HEID,

Subscribed and sworn to before me this 1st day of July, 1915.

[Notarial Seal] GUY McNAUGHTON,
Notary Public for Alaska.

My commission expires Oct. 24th, 1916.

Filed in the District Court, District of Alaska,
First Division. Jul. 1, 1915. J. W. Bell, Clerk. By
———, Deputy.

[Endorsed]: No. —A. In the District Court for Alaska at Juneau, Division No. 1. Charles A. Sulzer, John R. Heckman et al., for Themselves and Residents of Division No. 1, vs. Walstein G. Smith,

as Treasurer of the Territory of Alaska. Bill of Complaint. John G. Heid, Attorney for Complainants. [7]

In the District Court for Alaska, Division Number One, at Juneau.

No. 1323-A.

CHAS. A. SULZER et als.,

Plaintiffs,

vs.

WALSTEIN G. SMITH, as Treasurer of the Territory of Alaska,

Defendant.

Demurrer.

Comes now Walstein G. Smith, as treasurer of the Territory of Alaska, by J. H. Cobb, chief counsel for the said Territory, and demurs to the complaint of the plaintiffs herein, and for grounds of demurrer alleges:

I.

The plaintiffs have no capacity to maintain this suit.

II.

The said complaint does not state facts sufficient to constitute a cause of suit, in this: (a) It appears from said complaint that the Act mentioned in paragraph 7 of said complaint is a general appropriation by Congress of certain funds of the Federal Government; that under said Act, the defendant received and holds the sum of \$52,968.17; that said fund so received and held is to be expended under

terms of the grant, "as the Territorial Legislature may prescribe for the benefit of the public schools and public roads"; that the Act of the Alaska legislature mentioned in paragraph 9 of said complaint is a valid exercise of the power contained in said grant.

(b) It is not alleged that the forest reserve from which said moneys were derived is situated within the boundaries of any county, or that complainants reside in any county whereby they or it, are entitled to any exclusive benefit therefrom. [8]

(c) No facts are alleged showing that the complainants or the people of Judicial Division Number One are entitled to have said moneys expended in said division otherwise than prescribed by the Alaska Legislature.

(d) No sufficient facts are alleged to render said Act of the Alaska Legislature void for uncertainty.

(e) No facts are alleged showing why or in what respect said Act of the Alaska Legislature is in conflict with the Act of Congress of May 23, 1908.

(f) No facts are alleged, showing why or in what respect the said Act of the Alaska Legislature alters, amends, modifies or repeals the Act entitled "An Act to provide for the construction and maintenance of roads, the establishment and maintenance of schools and the care and support of insane persons in the District of Alaska, and for other purposes."

(g) No facts are alleged showing why or under what grant or title Judicial Division Number One, is entitled to have and use all of said sum of \$52,968.17.

III.

The Court has no jurisdiction of the cause of action, in that the complainants seek to have the Court by its decree modify and control a legislative appropriation of public moneys, and substitute such decree for the legislative Act.

Wherefore defendant prays judgment of the Court, whether he need answer further herein, and that the bill of complaint be finally dismissed with costs.

J. H. COBB,

Chief Counsel for the Territory of Alaska.

Service of the above and foregoing Demurrer admitted this the — day of July, 1915.

JOHN G. HEID,

Attorney for Plaintiffs.

Filed in the District Court, District of Alaska, First Division. Jul. 6, 1915. J. W. Bell, Clerk. By _____, Deputy. [9]

In the District Court for the District of Alaska, Division No. One, at Juneau.

No. 1323-A.

CHARLES A. SULZER et als.,

Plaintiffs,

vs.

WALSTEIN B. SMITH, as Treasurer of and for the Territory of Alaska,

Defendant.

Memorandum Opinion. [10]

The complaint in this suit alleges in substance:

1st. That the Tongass Forest Reserve is, and was at all times in the complaint mentioned, situated wholly within the First Division of Alaska. That from the sale of timber situated in such reserve there had accumulated a certain sum, twenty-five per centum of which is \$52,968.17.

2d. That by the Act of Congress approved May 23, 1908, it was provided—

“That hereafter twenty-five per centum of all money received from each Forest Reserve during any fiscal year, including the year ending June 30, 1908, shall be paid at the end thereof by the Secretary of the Treasury to the State or Territory in which such reserve is situated, to be expended as the State or Territorial Legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which the Forest Reserve is situated.”

3d. That in pursuance of said Act, the Secretary of the Treasury turned over to the defendant as Territorial Treasurer, the said sum of \$52,968.17, and that the said treasurer now holds the said sum.

4th. That by an act approved April 28, 1915, the legislature of the Territory of Alaska “divided the Territory of Alaska into four road districts,” each one of the judicial divisions of Alaska constituting one road district, and “attempted to divide all of

the money received by the treasurer” as follows: “25 per centum for the use and benefit of public schools in Alaska, and 75 per centum to be divided equally between the said four judicial divisions or road districts, thereby giving and apportioning to each of said four road districts a one-fourth part or share of said Forestry money or fund, irrespective of the fact whether any part of said whole fund had been paid on account of a Forest Reserve being situate in such divisions or districts, contrary to the provisions and intent of said Act of Congress, and to the irreparable damage and injury of said Division No. 1 of Alaska”; and that if the said provisions of said Act of the [11] Territorial Legislature are carried out “said school and road fund so created as aforesaid will be divided into four parts as directed by said wrongful and unconstitutional act of said legislature; three-fourths part of said full sum, to wit, the sum of \$39,726.12 will be entirely lost to said Division No. 1 of Alaska, and said Division No. 1 of Alaska, its residents, citizens, as well as the school children therein (of which there are many), will be deprived of the use and of the whole of the same for such said school and road purposes, without redress or possible recovery of the said money or fund belonging to said Division No. 1 of Alaska, to the great and irreparable injury and damage of the said school children and residents, inhabitants and citizens of said Division No. 1 of Alaska.”

5th. That plaintiffs are citizens and residents of the First Division of the Territory of Alaska, and

represented the said Division in the said Territorial Legislature.

The prayer is for an injunction restraining the treasurer from diverting any of this fund to the benefit of roads or schools in any divisions other than the First.

To this complaint a demurrer has been interposed on the following grounds:

1. Plaintiffs have no capacity to maintain this suit.
2. The complaint does not state facts sufficient to constitute a cause of suit.

In support of the demurrer it is urged that there are no counties in Alaska—or rather, that all Alaska must be taken as a county, and therefore that the disposal of the fund was entirely in the discretion of the legislature; in support of the complaint it is urged, that although there are no subdivisions in Alaska by the name of counties, yet the judicial divisions of Alaska are to all intents and purposes the same as counties, and that insomuch as the act of Congress aforesaid provides that the money shall be turned over to the Territorial Treasurer to [12] be expended as the legislature may prescribe “for the benefit of the public schools and public roads of the county or counties in which the forest reserve is situated,” the legislature had no power to divert this fund to any other purpose than to that expressed in the act. It is said that for the legislature to appropriate for the benefit of roads and schools in the Territory at large that money which Congress evidently meant to be applied for local benefit is to

betray and flout the trust which Congress reposed in the legislature, and that the Court ought to interfere to prevent what is avowed to be a palpable diversion of public funds.

Of course there is no magic in the word county. If there are subdivisions of the Territory of Alaska possessing the substantial attributes of what are called counties, the name of the subdivisions would not be important.

The judicial divisions of Alaska are in a great measure analogous to counties—they are subdivisions of Alaska both for judicial and political purposes—judicial insomuch as each division has a judge, a Marshal and a district attorney—political insomuch as each division elects members to the legislature. It is true that the divisions have no fiscal entity, no county commissioners, no county government, no county institutions, and neither raise nor expend funds provided by local taxation, but, for all that, they are more nearly analogous to counties than anything else we have. It cannot be gainsaid successfully that Congress meant this money to be applied to the needs of roads and schools in that part of the state or territory where the forest reserve was situated. It seems, however, to the Court that whether or not the judicial divisions should be held to be counties (and the Court expresses no opinion on the subject), there are three very substantial reasons why this action cannot be maintained, to wit:

A. Even conceding that the divisions should be considered as counties, yet a county is only a quasi-corporation which exists [13] only for public pur-

poses connected with the administration of a state government, and its revenues are not the property of the county in the sense in which the revenue of a private person or corporation is regarded. "The whole state has an interest in the revenue of a county, and for the public good the legislature must have the power to direct its application. The power conferred upon a county to raise a revenue by taxation, for instance, is a political power and its application, when collected, must necessarily be within the control of the legislature for political purposes."

Marion County vs. Lear, 108 Ill. 343;

People vs. Powers, 27 Ill. 187;

State vs. Graham, 19 N. W. 470.

B. The trust expressed in the Act of Congress is a trust personal to the United States, and this suit is not brought by the United States.

When Congress directed this money to be turned over to the Territorial Treasurer to be expended in such way as the legislature of Alaska might prescribe for the benefit of roads and schools in the county where the forest reserve was situate, it created only a personal trust. The money derived from the sale of the forest lands belonged to the United States, and the United States had the power to give it to whomsoever it pleased, and to make any person or body, corporate or unincorporate, its agents to disburse the fund. The United States constituted the legislature of the Territory as its disbursing agent, investing it with a large amount of discretion—the Territorial Treasurer is but the safe in which the money is deposited. Congress said to the legislature,

“We grant this money to the Territory for the benefit of roads and schools in that part of the Territory which produced the money, and we trust you to so apply it.” If the legislature does not so apply it, no one can complain but the donor, *i. e.*, the United States. [14]

In regard to the trust created by donation of the 16th and 36th sections of public lands for the support of schools, the Supreme Court of the United States says—

“The trusts created by these compacts relate to a subject certainly of universal interest but of municipal concern over which the power of the state is plenary and exclusive. In the present instance the grant is to the state directly, without limitation of its power, though there is a sacred obligation imposed on the public faith.”

Cooper vs. Roberts, 18 Howard, 175–182.

In relation to swamp lands granted by the Government to certain states for the express purpose of reclamation; By the Act of Congress approved the 28th of September, 1850 (9 U. S. Statutes at Large, 519), the terms of the grant are—

“To enable the state of * * * to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein”;

and yet, in Dunklin County vs. the District Court of Dunklin County, 23 Mo. 449, the Supreme Court of Missouri hold that the trust created by the Act of Congress granting the swamp-lands to the state for the benefit of the county in which they were situated

was a personal trust reposed in the public faith of the state and not a property trust fastened upon the land.

In *Barrett vs. Brooks*, 2 Iowa, 144, the Supreme Court of the State of Iowa held: First, that under said Act of Congress the fee simple title to the swamp-land passed to the State, and the legislature might dispose of the same; second, that the United States is the only party which can enforce the trust coupled with said grant, to apply the funds arising from the sale of such lands “exclusively, as far as necessary, to the purposes of reclaiming the lands”; that it cannot be enforced on the application of a private citizen.

In this last case the supervisors of the county, under the authority of the law of the State, appropriated \$7,000 of the swamp-land fund to aid in the building of bridges in the county. A citizen undertook to restrain such appropriation on the ground that it was a diversion of the fund from the purposes contemplated by the Act of Congress. Judge Dillon, who delivered the opinion of the Court, says: [15]

“The United States is the donor. Admit that the State or the county holds the lands, charged with a trust to apply the proceeds, as far as necessary, to the reclamation of said lands, who can enforce this trust? The United States might. * * * The United States, in this grant, deals with a state and not with counties or individuals. If the United States is satisfied with the disposition which the state has made,

or authorized to be made, of these lands, individual citizens must remain content.”

The same doctrine is in substance held by the Supreme Court of the United States in *Schulenberg vs. Harriman*, 21 Wallace, 44.

In *Supervisors v. State's Attorney*, 31 Ill. 68, the Supreme Court of the State of Illinois hold that the grant of the swamp-lands to the States was absolute, although the grant provided that it was for the purpose of reclaiming the said swamp-lands; that the act did not even impose a trust upon the State to apply the proceeds of the said lands to their reclamation; that the State had the power and right to dispose of such proceeds for any purpose which the legislature should determine was for the interest of the State; and in the same case the Court holds that even if a trust was imposed by the Act of Congress, there was no way to enforce it unless the United States should interfere. The same doctrine was reiterated in *Newell vs. Supervisors*, 37 Ill. 253, 2 N. W. 312.

The Supreme Court of Oregon, speaking of the same act says:

“The trust raised by the proviso is a matter of legislative, and not of judicial, concern; hence the diversion of the proceeds of the sale of swamp and overflowed lands from the purpose expressed in the Act of Congress to those of aiding in the construction of certain works of internal improvements, provided for by the legis-

lative assembly of the State of Oregon, in no way operates to defeat the title of the State.”

“These authorities fully support the position that the legislature has full power to dispose of the proceeds of the sales of swamp-lands, at least as against everybody except the United States; and that no person or corporation can be permitted to avoid any responsibility which has been assumed under the laws of the State in regard to the proceeds of the sales of these lands on the ground that such proceeds are appropriated to a use which is not authorized by the grant of Congress, or which is in violation of the trust imposed upon the State by such act.”

La Pointe v. Ashland, 2 N. W. (Wis.) 312.

I cannot see any substantial difference between the principles enunciated in those cases and those which are applicable here. So it would seem that even conceding that the First Division is a [16] fully equipped county, the power of the legislature to disregard the trust imposed cannot be questioned by anyone but the United States, or possibly by the Territory itself.

C. Plaintiffs show no equity in themselves for injunction. The Court is asked to hold this act of the legislature to be in violation of the Organic Act—*i. e.*, unconstitutional, and it is asked to do this at the suit of individuals who show no injury to themselves. That this cannot be done I do not think admits of a doubt.

Of course the State, by virtue of its prerogative sovereignty as the guardian of all the people, would

have a standing in a court of equity to enjoin the violation of a public trust; but even the State itself, when it acts for the protection of its own material interests and not by virtue of its prerogative sovereignty, cannot successfully invoke the aid of a court of equity for an injunction, unless it establishes a case of equitable cognizance, and a right to the peculiar relief demanded—in such a case its position would not be different from that of an ordinary suitor.

People vs. Canal Board of N. Y., 55 N. Y. 395.

In People vs. Ingersoll, 58 N. Y. 14, the Court says:

“A distinction is to be observed between actions by the people of the State, in right of the prerogative incident to sovereignty, and those founded upon some pecuniary interest or proprietary right. The latter are governed by the ordinary rules of law by which rights are determined between individuals.”

State vs. Pennoyer, 37 P. R. 906, was a case brought in the name of the State, not in its incidental sovereignty but *ex rel.* a citizen, and Judge Wolverton says:

“The case at bar presents the peculiar situation of the State calling into requisition one coordinate branch of the government to enjoin the executive and ministerial officers of the State, acting in the capacity of a board of commissioners of public buildings, from carrying out the provisions of a law adopted by another coordinate branch of the same State government.

The contention of the State is that the Court must interpose by the extraordinary remedy of injunction, and render nugatory the solemn enactment of a co-ordinate branch of its government, as in contravention of the fundamental law, without at the same time alleging any facts showing wherein and in what manner the State would be [17] damnified, and without exhibiting any good or sufficient reason for the exercise of such extraordinary power. A mere suggestion that the act complained of is unconstitutional, and that the legislature has exceeded its constitutional limitations, is insufficient to call into requisition a court of equity. 'The Court, as such, has no supervisory power or jurisdiction over public officials of public bodies.' The State, when equitable relief is sought, such as is prayed for in the present proceeding, must, like private individuals, bring itself within the known and fixed rules of equitable cognizance before the Court will grant its petition."

However, this is somewhat beside the question, for, in the case at bar no state, no sovereignty is here, either by virtue of its incidental prerogative, or by virtue of being a physical sufferer, or on the relation of some one; it is not here at all. This is a suit brought by private individuals, for the plaintiffs are but private individuals, although they say they are members of the legislature.

It is not here alleged that the plaintiffs' taxes will be increased (in fact it is not even alleged that they

are taxpayers), or that there will be any scarcity of funds for roads or schools; or that they, or any one of them, have any children going to school, or are interested in any way whatsoever. For this Court to declare an act of the legislature to be against Organic Act—that is, to be unconstitutional, at the suit of a person who shows no greater interest than plaintiffs in this case show themselves to possess, would be for the Court to exercise an unwarrantable and almost unheard of assumption of power.

So far as a suit by a citizen for an injunction is concerned, Judge Wolverton says:

“It is the settled doctrine of this State that an individual taxpayer, whose burdens would be increased by the wrongful acts of public officers and where a fraudulent or illegal diversion or misapplication of the public funds is about to be consummated, has such an interest, by reason of the special and peculiar injury he would sustain, as would give him a standing in a court of equity by injunction to restrain such acts and prevent such diversion of the public funds.

* * * The taxpayer, however, must present such a case as will bring him within the ordinary equitable rules which govern when relief by injunction is sought. He must show that some act is threatened or imminent which will result in some material injury to himself, for which there is no other adequate remedy at law.

* * * It (injunctive relief) was never granted merely to prevent an officer from carrying out a law of the state which was deemed un-

constitutional where some equity was not the foundation of the bill. (2 High on Injunctions, Sec. 1326.) * * * The complainant [18] who seeks an injunction must be able to specify some particular act, the performance of which will damnify him. * * * This Court has no power to examine an act of the legislature generally, and declare it unconstitutional. The limit of our authority in this respect is to disregard, as in violation of the constitution, any act or part of an act which stands in the way of the legal rights of a suitor before us; but a suitor who calls upon a court of chancery to arrest the performance of a duty imposed by the legislature upon a public officer must show conclusively, not only that the act about to be performed is unconstitutional, but also that it will inflict a direct injury upon him.”

State *ex rel.* Taylor vs. Pennoyer, 37 Pac. 906-7-8.

A fuller discussion of this matter by Judge Wolverton is to be found in the case of State *ex rel.* Taylor v. Lord, 43 Pac. page 471. It is there said:

“The judiciary takes cognizance of such proceedings only, if at all, which operate incidentally as a check upon a co-ordinate branch of government. It may, in a proper case, proceed against an officer engaged in the discharge of purely ministerial functions, which may indirectly or incidentally affect the acts of a co-ordinate branch, and even nullify and render

them inoperative; but directly, as against officers acting in a political, governmental, or discretionary capacity, it never has and never will, so long as the relative duties and powers of the co-ordinate departments are justly observed. *Gaines vs. Thompson, supra.* Moreover, it is not fit that these great powers, pertaining to sovereignty, which affect the whole people alike and none less nor more than the rest, should be invoked by individual citizens, or by a class or classes, or body corporate, or an aggregation thereof less than the whole state. State officers should not be subjected to the annoyance of a suit at the instance of every individual when civil or property rights are not invaded, who might conceive that the laws were not being applied to legitimate public purposes. State government being divided into three co-ordinate branches,—executive, legislative, and judicial,—it is most essential to the preservation of the autonomy of government that there be no encroachment of one branch upon another. And to this end the just limitations of the constitutional powers accorded to either branch should be nicely defined and jealously guarded. But sometimes one branch of government, in the discharge of its co-ordinate functions, oversteps the limit of its constitutional powers. In such a case one or both of the other branches of government may operate as a check upon its action. The legislature may pass an act in disregard of the inhibitions of the constitution. The executive

may veto the measure, or failing to do so, the judiciary may refuse to recognize it as controlling. The Governor acts upon his own motion, and by right of high constitutional powers and privileges reposed in him. The judiciary acts, not upon its own motion, but only when suitor duly authorized by law presents, in due form, a cause appropriate for its cognizance. Its machinery may be set in motion by private suitors, in some form or another, in all cases where civil or property rights are being invaded or entrenched upon to their injury or damage, be the suitor ever so humble, or the injury to be encountered ever so small; but in all cases of purely public concern, affecting the welfare of the whole people, or the State at large, the Court's action can only be [19] invoked by such executive officers of State as are by law intrusted with the discharge of such duties."

The demurrer will be sustained.

ROBERT W. JENNINGS,

Judge. [20]

In the District Court for Alaska, Division Number One, at Juneau.

No. 1323-A.

CHAS. A. SULZER et als.,

Plaintiffs,

vs.

WALSTEIN G. SMITH, as Treasurer of the Territory of Alaska,

Defendant.

Order Sustaining Demurrer.

This cause came on regularly to be heard upon the demurrer of the defendant to the complaint herein, Mr. Cobb appearing for said demurrer and Mr. Heid, *contra*; and the Court having heard said demurrer, and the argument of counsel thereon, and being fully advised in the premises, finds the law for the defendant.

It is therefore considered by the Court, and it is so ordered, adjudged and decreed, that said demurrer be, and the same is hereby, sustained; to which ruling of the Court, the plaintiffs, by their attorney, then and there excepted.

Upon application of the plaintiffs, they are allowed sixty days to take further proceedings herein as they may be advised.

Dated August 11th, 1915.

ROBERT W. JENNINGS,
Judge.

Entered Court Journal No. L, page 65.

Filed in the District Court, District of Alaska,
First Division. Aug. 12, 1915. J. W. Bell, Clerk.
By C. Z. Denny, Deputy. [21]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

No. 1323-A.

CHAS. A. SULZER et als.,

Plaintiffs,

vs.

WALSTEIN G. SMITH, as Treasurer of the Terri-
tory of Alaska,

Defendant.

Final Judgment.

This cause having heretofore come on for hearing upon the demurrer of the defendant to the complaint of the plaintiffs, which said demurrer was, on August 11th, 1915, sustained; and the plaintiffs having been allowed eighty days from and after said date to take such further proceedings herein as they may be advised, and said eighty days having expired and plaintiffs having failed to amend, or to take other proceedings, but electing to stand upon said complaint, now on motion of Mr. J. H. Cobb for a judgment for the defendant.

IT IS CONSIDERED BY THE COURT, and so ordered, adjudged and decreed that the plaintiffs' complaint herein be, and the same is hereby, dismissed; and it is further ordered that the defendant have and recover of the plaintiffs his costs herein incurred. Thirty days to plaintiff to file Bill of Exceptions.

Done in open court this the 8th day of November, A. D. 1915.

ROBERT W. JENNINGS,
Judge.

Entered Court Journal No. L, page 166.

Filed in the District Court, District of Alaska, First Division. Nov. 8, 1915. J. W. Bell, Clerk. By C. Z. Denny, Deputy. [22]

*In the District Court for the District of Alaska, at
Juneau, Division No. 1.*

No. 1323-A.

CHARLES A. SULZER, J. M. TANNER, JOHN R. HECKMAN, ARTHUR G. SHOUP, WILLIAM E. BRITT, and JOHN G. HEID, for Themselves and as Representatives of and for the People of Judicial Division No. 1, Southeastern Alaska,

Plaintiffs,

vs.

WALSTEIN G. SMITH, as Treasurer of and for the Territory of Alaska,

Defendant.

Bill of Exceptions.

Be it remembered that on this 22d day of July, 1915, the above-entitled cause came on regularly to be heard upon the demurrer of the above-named defendant, Walstein G. Smith, as treasurer of and for the Territory of Alaska, against the complaint of plaintiffs herein, and filed the 6th day of July, 1915; the grounds of said demurrer being:

1. That plaintiffs have no capacity to maintain this suit.

2. That said complaint does not state facts sufficient to constitute a cause of suit, in this:

(a) It appears from said complaint that the Act mentioned in paragraph 7 of said complaint is a general appropriation by Congress of certain funds of the Federal Government; that under said Act the defendant received and holds the sum of \$52,968.17; that said fund so received and held is to be expended under the terms of the grant, "as the Territorial Legislature may prescribe for the benefit of the public schools and public roads; that the Act of the Alaska Legislature mentioned in paragraph 9 of said complaint is a valid exercise of the power contained in said grant.

(b) It is not alleged that the forest reserve from which said moneys were derived is situated within the boundaries of any county, or that complainants reside in any county whereby they or it are [23] entitled to any exclusive benefit therefrom.

(c) No facts are alleged showing that the complainants or the people of Judicial Division Number One, are entitled to have said moneys expended in said division otherwise than prescribed by the Alaska Legislature.

(d) No sufficient facts are alleged to render said Act of the Alaska Legislature void for uncertainty.

(e) No facts are alleged showing why or in what respect said Act of the Alaska Legislature is in conflict with the Act of Congress of May 23, 1908.

(f) No facts are alleged, showing why or in what respect the said Act of the Alaska Legislature alters, amends, modifies or repeals the Act entitled "An Act to provide for the construction and maintenance of roads, the establishment and maintenance of schools, and the care and support of insane persons in the District of Alaska, and for other purposes."

(g) No facts are alleged showing why or under what grant or title Judicial Division Number One is entitled to have and use all of said sum of \$52,968.17.

3. The Court has no jurisdiction of the cause of action, in that the complainants seek to have the Court by its decree modify and control a legislative appropriation of public moneys, and substitute such decree for the Legislative Act.

The Court having heard the argument of counsel, sustained said demurrer in favor of defendant and against said plaintiffs, to which ruling of said Court, the defendants then and there excepted, which exception was then and there by the Court allowed. And the defendants, after further time granted to them within which to take such other or further steps in the premises as they may deem advised, to wit, on the 8th day of November, 1915, announced in open court that they did not intend to further plead, but desired to stand upon their Bill of Complaint; [24]

The Court thereupon made and entered the following final Judgment:

No. 1323-A.

CHARLES A. SULZER et al.,

vs.

WALSTEIN G. SMITH, as Treasurer of the Territory of Alaska.

Final Judgment.

This cause having heretofore come on for hearing upon the demurrer of the defendant to the complaint of the plaintiffs, which said demurrer was on August 11th, 1915, sustained; and the plaintiffs having been allowed eighty days from and after said date to take such further proceedings herein as they may be advised, and said eighty days having expired and plaintiffs having failed to amend, or take other proceedings, but electing to stand upon said Complaint, now on motion of Mr. J. H. Cobb for judgment for the defendant;

IT IS CONSIDERED BY THE COURT, and so ordered, adjudged and decreed that the plaintiffs' complaint herein be and the same is hereby, dismissed, and it is further ordered that the defendant have and recover of the plaintiffs his costs herein incurred.

Done in open court this 8th day of November, 1915.

R. W. JENNINGS,

Judge.

—to all of which said judgment and entry thereof the plaintiffs then and there excepted and exception was allowed by the Court.

Order Settling Bill of Exceptions.

The above and foregoing Bill of Exceptions having been duly presented for settlement by the plaintiffs within the time allowed by law, and rules of this court, and the said Bill of Exceptions being full, true, and correct, the same is hereby settled and allowed by the undersigned. [25]

January 17, 1916.

ROBERT W. JENNINGS,
Judge Who Tried Said Cause.

Filed in the District Court, District of Alaska, First Division. Dec. 13, 1915. J. W. Bell, Clerk. By ————, Deputy.

Filed in the District Court, District of Alaska, First Division. Jan. 17, 1916. J. W. Bell, Clerk. By ————, Deputy.

[Endorsed]: No. 1323-A. In District Court for Alaska, Division No. 1. Charles A. Sulzer et al. vs. Walstein G. Smith, as Treasurer. Bill of Exceptions. Received copy of within Bill of Exceptions this 13th day Dec., 1915. J. H. Cobb. By E. L. Cobb. [26]

*In the District Court for the District of Alaska, at
Juneau, Division No. 1.*

No. 1323-A.

CHARLES A. SULZER, J. M. TANNER, JOHN R.
HECKMAN, ARTHUR G. SHOUP, WILL-
IAM E. BRITT, and JOHN G. HEID, for
Themselves and as Representatives of and for
the People of Judicial Division No. 1, South-
eastern Alaska,

Plaintiffs,

vs.

WALSTEIN G. SMITH, as Treasurer of and for the
Territory of Alaska,

Defendant.

Assignment of Errors.

And now come the plaintiffs and appellants and present this, their assignment of errors and herein specifically point out the errors on which they rely on this appeal:

I.

The Court erred in sustaining defendant's demurrer to plaintiffs' complaint, which was a general and special demurrer, for this:

The facts stated in said complaint constituted a complete cause of action in that it appeared that the Territory of Alaska is divided into four Judicial Divisions, that the complainants Charles A. Sulzer and J. M. Tanner, are the duly elected, acting and qualified senators of and for said Division No. 1,

and that John R. Heckman, Arthur G. Shoup, William E. Britt and John G. Heid, are the representatives of said Division, (being Judicial No. 1, aforesaid), in the Legislature of Alaska, and that said senators and representatives bring this suit for themselves, and for all the people of said Division No. 1, of Alaska; that the Tongass National Forest Reservation was created by proclamation of the President of the United States, and is all situated in and within said Division No. 1; that the Congress of the United States, by its Act, approved May 23, 1908, directed that twenty-five per centum of all moneys received from each forest reserve shall be paid by the Secretary of the Treasury of the United States to the State or Territory [27] in which said forest reserve is situated, to be expended by the State or Territorial legislature for the benefit of public schools and public roads of the county or counties in which the forest reserve is situated; that by virtue of said Act of Congress said Division No. 1 is entitled to have and receive the sum of fifty-two thousand nine hundred sixty-eight and $17/100$ dollars (\$52,968.17) of such forestry fund or money, paid by the Secretary of the Treasury of the United States to the Territory of Alaska, to its treasurer, the defendant herein, on account of said Tongass National Forest Reservation, situated wholly in and within said Division No. 1; that the Alaska Territorial Legislature in 1915 enacted a law creating four road districts, to consist of said four Judicial Divisions of Alaska, and further dividing said forestry fund or money belonging to said

Judicial Division No. 1, equally, among all of said four Divisions; that such law enacted by said territorial legislature is unconstitutional; that the said pretended law is void for uncertainty, and is in conflict with section 3 of the Organic Act of the Territory of Alaska, passed by the Congress of the United States, approved August 24, 1912, entitled "An Act to create a legislative assembly in the Territory of Alaska, to confer legislative power thereon, and for other purposes," in that said section 3 of said "Organic Act" does not extend the authority of the legislative assembly, created by said Act, to alter, amend, modify and repeal the Act of Congress entitled "An Act to provide for the construction and maintenance of roads, the establishment and maintenance of schools, and the care and support of insane persons in the District of Alaska, and for other purposes," approved August 27, 1905.

II.

The Court erred in sustaining defendant's demurrer, further, for this: In holding that the plaintiffs had not the capacity to maintain this suit.

III.

The Court erred in entering its decree in favor of the defendant and against plaintiffs, instead of entering the decree in favor of the plaintiffs.

WHEREFORE, plaintiffs pray for a reversal of said judgment and [28] decree, and that a decree be entered in favor of plaintiffs and against the defendant herein, and for such other and further relief as may seem meet and proper.

JOHN G. HEID,
Attorney for Appellants.

Filed in the District Court, District of Alaska,
First Division, Oct. 25, 1916. J. W. Bell, Clerk. By
—————, Deputy. [29]

*In the District Court for the District of Alaska, at
Juneau, Division No. 1.*

No. 1323-A.

CHARLES A. SULZER, J. M. TANNER, JOHN
R. HECKMAN, ARTHUR G. SHOUP,
WILLIAM E. BRITT and JOHN G. HEID,
for Themselves and as Representatives of
and for the People of Judicial Division No. 1,
Southeastern Alaska,

Plaintiffs,

vs.

WALSTEIN G. SMITH, as Treasurer of and for the
Territory of Alaska,

Defendant.

Petition on Appeal.

The above-named plaintiffs conceiving themselves aggrieved by the decree and final judgment made and entered in the above-entitled suit, on the 9th day of November, 1915, hereby appeal from said decree and judgment to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons specified in the assignment of errors which is filed herewith, and prays that this appeal be allowed, and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, be sent to the United

States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California.

JOHN G. HEID,
Attorney for Complainants.

The foregoing appeal is allowed this 25th day of October, 1916.

ROBERT W. JENNINGS,
Judge of the District Court for the District of Alaska, Division No. 1.

Filed in the District Court, District of Alaska, First Division, Oct. 25. 1916. J. W. Bell, Clerk. By _____, Deputy. [30]

In the District Court for the District of Alaska, at Juneau, Division No. 1.

No. 1323-A.

CHARLES A. SULZER, J. M. TANNER, JOHN R. HECKMAN, ARTHUR G. SHOUP, WILLIAM E. BRITT and JOHN G. HEID, for Themselves and as Representatives of and for the People of Judicial Division No. 1, Southeastern Alaska,

Plaintiffs,

vs.

WALSTEIN G. SMITH, as Treasurer of and for the Territory of Alaska,

Defendant.

Citation on Appeal.

To Walstein G. Smith, as Treasurer of and for the Territory of Alaska, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco, California, within thirty days from the date hereof, pursuant to an order allowing an appeal to said Court, of the above-entitled cause, entered in the Clerk's Office of said District Court of Alaska, for Division No. 1, in case No. 1323-A, on the 25th day of October, 1916, wherein Charles A. Sulzer, J. M. Tanner, J. R. Heckman, Arthur G. Shoup, William E. Britt and John G. Heid for themselves and others are appellants and Walstein G. Smith, as Treasurer of and for the Territory of Alaska, is respondent, to show cause, if any there be, why the decree in said appeal mentioned should not be corrected and speedy justice done to the parties in that behalf.

Done in open court at Juneau, Alaska, this 25th day of October, 1916.

ROBERT W. JENNINGS,

Judge of District Court for the District of Alaska,
Division No. 1. [31]

Service of a copy of the foregoing citation is hereby admitted at Juneau, Alaska, this 25th day of October, 1916.

J. H. COBB.

By E. L. Cobb,

Attorney for Defendant.

WALSTEIN G. SMITH,

As Treasurer, etc.

Filed in the District Court, District of Alaska,
 First Division. Oct. 25, 1916. J. W. Bell, Clerk.
 By _____, Deputy. [32]

*In the District Court for the District of Alaska, at
 Juneau, Division No. 1.*

CHARLES A. SULZER, J. M. TANNER, JOHN
 R. HECKMAN, ARTHUR G. SHOUP,
 WILLIAM E. BRITT and JOHN G. HEID,
 for Themselves and as Representatives of
 and for the People of Judicial Division No. 1,
 Southeastern Alaska,

Plaintiffs,

vs.

WALSTEIN G. SMITH, as Treasurer of and for the
 Territory of Alaska,

Defendant.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS,
 that we, Charles A. Sulzer, J. M. Tanner, John R.
 Heckman, Arthur G. Shoup, William E. Britt, and
 John G. Heid as principals, and George F. Miller,
 and Guy McNaughton, as sureties, are held and
 firmly bound unto Walstein G. Smith, as Treasurer
 of and for the Territory of Alaska, in the penal sum
 of two hundred and fifty dollars (\$250), to the pay-
 ment of which well and truly to be made we bind
 ourselves, our, and each of our heirs, executors, ad-
 ministrators or assigns, jointly and severally, firmly
 by these presents.

Sealed with our seals and dated this 24th day of October, 1916.

NOW THE CONDITION of the above bond and obligation is such, that whereas, the above plaintiffs, Charles A. Sulzer, J. M. Tanner, John R. Heckman, Arthur G. Shoup, William E. Britt, and John G. Heid, for themselves and as representatives of and for the people of Judicial Division No. 1, Southeastern Alaska, have appealed to the United States Circuit Court of Appeals for the Ninth Circuit, praying in such appeal for a reversal of a decree rendered in the above-entitled court and cause in favor of said defendant, Walstein G. Smith, as Treasurer of and for the Territory of Alaska, and against the said plaintiffs; [33]

NOW, THEREFORE, if the above-named plaintiffs shall prosecute said appeal to effect, and answer all costs if they fail to make said appeal good, then this obligation shall be void and of no effect; otherwise the same shall remain in full force, virtue and effect.

JOHN G. HEID, (LS)

For Himself and as Attorney of Record for

CHARLES A. SULZER, (LS)

J. M. TANNER, (LS)

J. R. HECKMAN, (LS)

WILLIAM E. BRITT, (LS)

ARTHUR G. SHOUP, (LS)

Principals.

GEORGE F. MILLER, (LS)

GUY McNAUGHTON, (LS)

Sureties.

United States of America,
District of Alaska,—ss.

We, George F. Miller and Guy McNaughton, the sureties in the above obligation, being first duly sworn, according to law, each for himself, and not for the other, deposes and says: I am a resident of the District of Alaska, am in all ways qualified to become surety on bail, that I am worth the sum of five hundred dollars in property situated within said District, over and above all my just debts and liabilities and obligations, exclusive of property exempt from execution and forced sale.

GEORGE F. MILLER,
GUY McNAUGHTON,

Subscribed and sworn to before me this 24th day of October, 1916.

[Notarial Seal]

R. H. STEVENS,
Notary Public.

My commission expires December 30, 1919.

Filed in the District Court, District of Alaska,
First Division. Oct. 25, 1916. J. W. Bell, Clerk.

By _____, Deputy.

Approved Oct. 25/16.

R. W. JENNINGS,
Judge. [34]

In the District Court for the District of Alaska, Division Number One, at Juneau.

CHARLES A. SULZER, J. M. TANNER et al.,
Plaintiffs,

vs.

WALSTEIN G. SMITH, as Treasurer of and for the
Territory of Alaska,

Defendant.

Praeceptum for Transcript of Record.

To the clerk of the above-entitled court.

Please prepare a transcript of the record in the above-entitled and numbered cause, for transmission to the United States Appellate Court for the Ninth Circuit at San Francisco, State of California, including the following:

1. Complaint.
2. Demurrer to Complaint.
3. Memorandum Opinion.
4. Order Sustaining Demurrer.
5. Final Judgment.
6. Bill of Exceptions.
7. Assignment of Errors.
8. Petition on Appeal.
9. Citation.
10. Bond.

JOHN G. HEID,
Atty. for Appellants.

Filed in the District Court, District of Alaska, First Division, Oct. 25, 1916. J. W. Bell, Clerk. By
By L. E. Spray, Deputy. [35]

In the District Court for the District of Alaska, Division No. 1, at Juneau.

United States of America,
District of Alaska, Division No. 1,—ss.

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

I, J. W. Bell, Clerk of the District Court for the District of Alaska, Division No. 1, hereby certify that the foregoing and hereto attached 35 pages of typewritten matter, numbered from 1 to 35, both inclusive, constitute a full, true, and complete copy, and the whole thereof of the record prepared in accordance with the praecipe of attorney for plaintiffs and appellants on file in my office and made a part hereof, in Cause No. 1323-A, wherein Charles A. Sulzer, J. M. Tanner, John R. Heckman, Arthur G. Shoup, William E. Britt and John G. Heid, for themselves and as Representatives of and for the People of Judicial Division No. 1, Southeastern Alaska are the plaintiffs and appellants and Walstein G. Smith, as Treasurer of the Territory of Alaska is defendant and appellee.

I further certify, that the said record is by virtue of the petition on appeal and citation issued in this cause and the return thereof in accordance therewith.

I further certify that this transcript was prepared by me in my office, and that the cost of preparation, examination and certificate, amounting to sixteen and 95/100 dollars (\$16.95) has been paid to me by counsel for appellants.

IN WITNESS WHEREOF I have hereunto set my hand and the seal of the above-entitled Court this 25th day of October, 1916.

[Seal]

J. W. BELL,
Clerk,

By _____,
Deputy.

[Endorsed]: No. 2872. United States Circuit Court of Appeals for the Ninth Circuit. Charles A. Sulzer, J. M. Tanner, J. R. Heckman, Arthur G. Shoup, William E. Britt and John G. Heid, Appellants, vs. Walstein G. Smith, as Treasurer of and for the Territory of Alaska, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Alaska, Division No. 1.

Filed November 2, 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

